

**Gian Chand Vs. State**

**Gian Chand Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/1170223](http://sooperkanoon.com/1170223)

**Court :** Delhi

**Decided On :** Nov-12-2014

**Judge :** Pradeep Nandrajog

**Appellant :** Gian Chand

**Respondent :** State

**Judgement :**

§~7 & 8 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: November 12, 2014 + DEATH SENTENCE REF. 5/2010 STATE Represented by: ..... Petitioner Ms.Aashaa Tiwari, APP for the State with Insp.Sanjeev Kr.P.S. S.P.Badli versus JAGTAR & ORS Represented by: ..... Respondents Ms.Payal Juneja, Advocate CRL.A. 321/2013 GIAN CHAND Represented by: ..... Appellant Ms.Payal Juneja, Advocate versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Sanjeev Kumar, SHO P.S.S.P.Badli  
CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Five persons : (i) Jagtar Singh (A-1), (ii) Sheela @ Chabili (A-2), (iii) Jitender @ Nanu, (iv) Gian Chand and (v) Ashok Kumar @ Ganja were charged for having entered into a conspiracy to murder Bimla, Lakha and Bindeshwar Yadav. They were further charged of giving effect to the conspiracy by causing the death of the said persons. They were further charged of intending to cause the death of Madan Prasad who escaped death due to providence. In other words,

charges were framed against the five for an offence punishable under Section 120B IPC, 302 read with Section 120B/34 IPC and for the offence punishable under Section 307 IPC.

2. After the trial in view of the evidence led Jitender was acquitted. The other four were convicted and sentenced to death.

3. Death Reference No.5/2010 concerns confirmation of the death sentence imposed by the learned Trial Judge. Crl.A.No.321/2013 has been filed by Gian Chand.

4. Jagtar Singh, Sheela and Ashok Kumar pleaded before this Court that they were juvenile. After conducting an inquiry into their juvenility a detailed order was passed by this Court on April 20, 2012 declaring Sheela, Jagtar Singh and Ashok Kumar @ Ganja to be juvenile. It was followed by an order dated August 01, 2014 setting free said three juvenile accused noting that they had already undergone the maximum sentence of three years which could be imposed against them.

5. Thus, the death reference continues only against Gian Chand who has filed Crl.A.No.321/2013 6. Having perused the evidence led at the trial and the impugned decision we find that Gian Chands name finds a mention in the testimony of Raju Yadav PW-4. This could be the percipient evidence against him which needs to be considered by us. The second incriminating circumstance which appears against Gian Chand is he making a disclosure statement in which he volunteered to get recovered a shirt worn by co-accused Ashok Kumar @ Ganja stating that the shirt was worn by accused when the crime was committed followed by Gian Chand leading the police party to his house and from there within an iron box kept in the room recovering the shirt which was seized vide seizure memo Ex.PW23/L. The last incriminating evidence surfacing is Gian Chand handing over some documents of House No.30, Village Badli to the investigating officer which was seized vide memo Ex.PW23/M.

7. We note the testimony of Raju Yadav PW-4 in full. He has deposed as under:

On 6-6-03, at 2.30 AM Bindeshwari was my co-villager. He had come to meet his brother Lakhan on 4-6-03. Lakhan was residing in a gher at village Badli. But, I cannot tell the house number. I also do not know as to who was the owner of that house. I went to meet Bindeshwari on 6-6-03 and we talked upto the evening At about 5 PM again said : I had gone to meet Bindeshwari at 5 PM. I had talks with him till 7 PM and it was dark. Bindeshwari asked me to stay with him as it is already late in night. We had food. I went upstairs and slept on a cot. At about 2.30 AM, I heard the sound of gunshot fire. I woke up. I identified Ganja. Ganja had visited Lakhan as a guest. I saw Ganja running away after I heard the sound of fire from the gate of Lakhan. I cannot tell the name of the person who was committed murder of Bindeshwari. The witness has pointed out towards accused Jagtar, Sheela, Gian Chand and Ashok Kumar to be the persons who were committing murder of Bindeshwari. Lakhan was given beatings by Sheela and Ashok while Bindeshwari was given beatings by Jagtar and Gian Chand. (The witness has only pointed out towards the accused persons) Accused Ashok was inflicting injuries on Bindeshwari with an axe. Lakhan was being caused injuries by axe by accused Ashok Kumar (the witness has pointed out towards accused Ashok Kumar being the persons responsible for causing injuries by axe to Bindeshwari as well as to Lakhan). Somebody had fired at the chowkidar but I could not see him. Witness has volunteered that he was one of the amongst accused persons present in the Court but he cannot identify him. Thereafter, police came. Again said: That the villagers were able to catch hold of accused Sheela and accused Jagtar. Accused Ashok had managed to run away at that time but later on he was apprehended and was brought. Again said: Accused Ashok and accused Gian Chand were later on apprehended and were brought. Bimla was also caused injuries (The witness has used the expression that Bimla Aur Lakhan Ko Kat Diya). They were removed to the hospital (Witness has pointed out towards Ashok Kumar and has stated that this accused was identified by him at the spot itself). I had not identified any other accused at any other point of time at any place.

8. The testimony of the witness naming Gian Chand is vague. He has made a reference to Gian Chand as follows: Lakhan was given beatings by Sheela and Ashok while Bindeshwari was given beatings by Jagtar Singh and Gian Chand.....Accused Ashok and Gian Chand was later on apprehended and

were brought. 9. We find that the witness was declared hostile and was confronted with his previous statement from which, as per the prosecution, the witness was resiling. In spite of being confronted he did not agree with the suggestions concerning portions A to A and B to B in the previous statement made by the witness.

10. Under the circumstances, it has to be held that the percipient evidence of Raju Yadav does not inspire confidence concerning role of Gian Chand.

11. At this state we note that Madan PW-3 an injured has turned hostile and not supported the case of the prosecution even a wee bit.

12. Recovery of a shirt pursuant to the disclosure statement by Gian Chand is not the shirt, as per the prosecution, which Gian Chand was wearing when the crime was committed. The part of his disclosure statement that this was the shirt which co-accused Ashok was wearing is not admissible in evidence against him as an incriminating evidence. We find no evidence led to prove that shirt in question was worn by Ashok when the crime was committed. Besides only human blood was detected on the shirt. Its group could not be linked to the deceased. These are the reasons to hold that the recovery of the shirt in question would not be incriminating evidence against Gian Chand. We highlight that the prosecution has not proved that the blood detected on the shirt was that of the deceased.

13. As regards Gian Chand handing over some documents concerning House No.30, Village Badli, the same would evince that as per the documents he was the owner of the house. The incriminating link of said ownership to him as per the prosecution is the motive for the crime i.e. Gian Chand not being happy that the deceased living to the house in question, that would be a too weak motive 14. We accordingly answer the death reference and dispose of the appeal not confirming the sentence imposed upon Gian Chand. We acquit Gian Chand of the charge framed against him.

15. If not required in other case Gian Chand be set free forthwith.

16. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)  
JUDGE NOVEMBER12 2014 skb

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**